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(Delaware)

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 ARIEL ABITTAN,

18 Plaintiff,

19 v.

20 LILY CHAO (A/K/A TIFFANY CHEN, A/K/A
21 YUTING CHEN), DAMIEN DING (A/K/A
22 DAMIEN LEUNG, A/K/A TAO DING),
23 TEMUJIN LABS INC. (A DELAWARE
24 CORPORATION), AND TEMUJIN LABS INC.
(A CAYMAN CORPORATION),

25 Defendants,

26 and

27 EIAN LABS INC.,

28 Nominal Defendant.

Case No.: 5:20-cv-09340

**DEFENDANT TEMUJIN LABS INC.
(DELAWARE)'S REQUEST FOR
JUDICIAL NOTICE AND NOTICE OF
DOCUMENTS INCORPORATED BY
REFERENCE IN SUPPORT OF
MOTION TO DISMISS COMPLAINT**

Date: May 19, 2021

Time: 1:00 PM

Place: Courtroom 5, 4th Floor

Judge: Hon. Nathanael Cousins

1 Defendant Temujin Labs Inc. (Delaware) (“Temujin Delaware”) hereby requests that the
2 Court take judicial notice of the following documents, attached as **Exhibits A through F** to the
3 Declaration of Jennifer C. Bretan (“Bretan Declaration”), in connection with its motion to dismiss
4 the Complaint. Exhibits A, B, E and F are each are subject to judicial notice pursuant to Rule 201
5 of the Federal Rules of Evidence. In addition, Exhibits C and D may be considered under the
6 incorporation by reference doctrine because each is expressly referred to, relied on, or quoted in
7 the Complaint. The documents to be considered are as follows:

8 1. The entity details of Temujin Delaware as reflected in the certification of
9 incorporation by Delaware’s Secretary of State and as published online by the Delaware Division
10 of Corporations (last accessed March 30, 2021, available at
11 <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx>), true and correct copies of
12 which are attached as **Exhibit A** to the Bretan Declaration. These documents are offered to
13 demonstrate that Temujin Delaware was incorporated on July 2, 2019, which fact is subject to
14 judicial notice because it can be accurately and readily determined from sources whose accuracy
15 cannot reasonably be questioned.

16 2. The Cayman Islands General Registry Report for Temujin Labs Inc. (Cayman)
17 (“Temujin Cayman”), a true and correct copy of which is attached as **Exhibit B** to the Bretan
18 Declaration. This document is offered to demonstrate that Temujin Cayman was incorporated on
19 July 2, 2019, which fact is subject to judicial notice because it can be accurately and readily
20 determined from sources whose accuracy cannot reasonably be questioned.

21 3. The July 3, 2019 Unanimous Action of Members of Juniper Venture Partners LLC
22 approving the transfer of the assets of Eian Labs Inc. (“Eian”) to Temujin Cayman, a true and
23 correct copy of which is attached as **Exhibit C** to the Bretan Declaration. This document is
24 offered to demonstrate the fact of and contents of the consent document Plaintiff alleges he signed
25 and may be considered under the “incorporation by reference” doctrine because Plaintiff refers to
26 and relies upon this document in his Complaint at paragraphs 4, 91-97, and 155.

27 4. The August 12, 2019 Intellectual Property Sale Agreement between Eian and
28 Temujin Cayman, a true and correct copy of which is attached as **Exhibit D** to the Bretan

1 Declaration. This document is offered to demonstrate the fact of and contents of the agreement
2 and may be considered under the “incorporation by reference” doctrine because Plaintiff refers to
3 and relies upon this agreement in his Complaint at paragraphs 4, 95, 101, and 155.

4 5. The complaint filed by Temujin Delaware against Ariel Abittan and other co-
5 defendants on November 6, 2020 in Santa Clara County Superior Court, *Temujin Labs Inc. v.*
6 *Abittan et al.*, No. 20CV372622, a true and correct copy of which is attached as **Exhibit E** to the
7 Bretan Declaration. This document is offered to demonstrate the existence of an earlier-filed
8 related case and is subject to judicial notice because the existence of that case is not disputed and
9 can be accurately and readily determined from sources whose accuracy cannot reasonably be
10 questioned.

11 6. Attached as **Exhibit F** is a true and correct copy of the Order Deeming Case
12 Complex and Staying Discovery and Responsive Pleading Deadline entered by the court in
13 *Temujin Labs Inc. v. Abittan et al.* on November 9, 2020. This document is offered to
14 demonstrate the deadline for Ariel Abittan to answer in that case and is subject to judicial notice
15 because the fact that the deadline has not passed is not disputed and can be accurately and readily
16 determined from sources whose accuracy cannot reasonably be questioned.

17 **I. EXHIBITS A, B, E AND F ARE PROPERLY SUBJECT TO JUDICIAL NOTICE**
18 **PURSUANT TO FRE 201**

19 Courts may take judicial notice of information made publicly available by government
20 entities. *See United States Small Bus. Admin. v. Bensal*, 853 F.3d 992, 1003 n.3 (9th Cir. 2017)
21 (“It is appropriate to take judicial notice of this information, as it was made publicly available by
22 government entities.”); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010)
23 (“It is appropriate to take judicial notice of this information, as it was made publicly available by
24 government entities (the school districts), and neither party disputes the authenticity of the web
25 sites or the accuracy of the information displayed therein.”). Exhibits A and B are records
26 available from the Delaware Secretary of State and the Cayman Islands General Registry,
27 respectively, and are thus properly subject to judicial notice. Temujin Delaware offers Exhibits A
28 and B solely to demonstrate that both it and Temujin Cayman were formed on July 2, 2019.

1 In addition, court filings, such as Exhibits E and F are properly subject to judicial notice.
 2 *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Temujin
 3 Delaware offers Exhibits E and F solely to demonstrate the existence of (and pertinent deadlines
 4 related to) the case filed by Temujin Delaware against Ariel Abittan and other co-defendants on
 5 November 6, 2020, in Santa Clara County Superior Court.

6 **II. EXHIBITS C AND D ARE REFERRED TO, RELIED ON OR QUOTED IN THE**
 7 **COMPLAINT AND ARE INCORPORATED BY REFERENCE**

8 The Complaint purports to quote, refer to, or rely on Exhibits C and D. The incorporation
 9 by reference doctrine allows the Court to consider such documents, whether or not they are
 10 judicially noticeable, where, as here, a plaintiff refers extensively to those documents and the
 11 documents form the basis of their claims. *See, e.g., In re NVIDIA Corp. Sec. Litig.*, 768 F.3d
 12 1046, 1058 n.10 (9th Cir. 2014); *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F.
 13 Supp. 2d 1045, 1060 (N.D. Cal. 2012). The Court may consider the full contents, even if a
 14 complaint only relies on certain portions. *See, e.g., In re Bare Escentuals, Inc. Sec. Litig.*, 745 F.
 15 Supp. 2d 1052, 1066 (N.D. Cal. 2010); *Cement Masons & Plasterers Joint Pension Trust v.*
 16 *Equinix, Inc.*, 2012 WL 685344, at *5 n.4 (N.D. Cal. Mar. 2, 2012); *see also Knievel v. ESPN*,
 17 393 F.3d 1068, 1076 (9th Cir. 2005) (“We have extended the ‘incorporation by reference’
 18 doctrine to situations in which the plaintiff’s claim depends on the contents of a document, the
 19 defendant attaches the document to its motion to dismiss, and the parties do not dispute the
 20 authenticity of the document[.]”).

21 For the reasons set forth above, Temujin Delaware respectfully requests that the Court
 22 consider **Exhibits A through F** to the Bretan Declaration.

23 Dated: April 9, 2021

FENWICK & WEST LLP

24 By: /s/ Jennifer C. Bretan
 25 Jennifer C. Bretan

26 Attorneys for Defendant Temujin Labs Inc.
 27 (Delaware)
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